
Natural Resource Damage Funding Guidelines

May 7, 2002



**United States Coast Guard
National Pollution Funds Center
Natural Resource Damage Claims Division**

4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804





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**Natural Resource Damage
Funding Guidelines**

TABLE OF CONTENTS

	Page
I. Introduction	7
II. Initiate Funding Guidance	11
Initiate Funding Terms and Conditions.....	12
Attachment IIA Interagency Agreement to Initiate Natural Resource Damage Assessment under OPA between the National Pollution Funds Center and the Federal Lead Administrative Trustee ..	17
III. Natural Resource Damage Claims Guidelines.....	23
Natural Resource Damage Claim Guidelines	24
Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990	32
Attachment III B Emergency Restoration Claims	35
Attachment III C: Information Pertinent to Submitting and Adjudicating Natural Resource Damage Claims	38

SECTION I

INTRODUCTION



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Natural Resource Damage Funding Guidelines

Introduction

This is a guidance document prepared by the Natural Resource Damage Claims Division of the United States Coast Guard National Pollution Funds Center (NPFC). This guidance document addresses both initiate funding requests as well as claims for assessments and restoration plans developed during the execution of oil spill natural resource damage assessments. **For claim adjudication purposes, the NPFC does not specify the format that claim submissions must take. The claimant may use any system for documenting the NRDA claim as long as it meets the statutory and regulatory requirements for content. Claims lacking this information may be returned to the claimant with a request for required information before further claim processing can occur.**

NPFC is committed to payment of valid claims for natural resource damage assessment and restoration under OPA. NPFC believes, in those cases where the party responsible for injuries to natural resources and their services resulting from an OPA incident cannot or will not pay compensation, that the will of Congress was that NPFC make prompt and fair payment of such claims to trustees so that timely assessment and restoration can be accomplished. Therefore, these guidelines are intended to aid, where necessary, natural resource trustees and, ultimately, the environment.

Section II of this document provides guidance for initiate funding. The guidance provided in Section II begins with the terms and conditions for using the Oil Spill Liability Trust Fund (OSLTF) for initiating a Natural Resource Damage Assessment. Section II has been developed to provide guidance and funding for “initiation” activities under the statute. Trustees who incur costs and are reimbursed by the OSLTF will also be guided by this Instruction. Attachment II A at the end of Section II is an Interagency Agreement for “Providing Funding to Natural Resource Trustees to Conduct the Initiation of an Assessment of Natural Resource Damages under the Oil Pollution Act of 1990 (OPA)”.

Section III of this document provides guidance for assessment and restoration claims conducted pursuant to OPA and the NRD regulations. The Natural Resource Damage (NRD) Claim Guidelines and supplemental guidelines may be used for submitting claims to the NPFC to document natural resource damages resulting from an incident under OPA. Original documentation is preferred for cost recovery and should not be retyped, even when hand written. Accordingly, the claimant must establish sufficient controls and procedures to provide the requested information and documentation.

While some of the information requested for claims is easily compiled (e.g., claimant name and contact information), other documentation requests are complex (e.g., estimates of natural recovery of impacted environments). Much of the information requested may already be incorporated into other documents (e.g., the Final Restoration Plan). In these cases, simply reference the location of the requested information within the claim submission materials to include the document, page, and paragraph, as appropriate.

These guidelines establish no new requirements. They discuss and frequently paraphrase OPA and the implementing claims regulations. The guidelines do not create new rights or liabilities. They are intended to give practical guidance only. Controlling legal authority for NRD claims resides in the Oil Pollution Act of 1990 (33 US Code §2701 et seq.) and the interim claims regulations (33 CFR Part 136). In the event of any conflict between these guidelines and any statute or regulation, including the Damage Assessment Regulations found at 15 CFR Part 990 (e.g., for definitions or to determine if in compliance



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Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202)493-6860

**Natural Resource Damage
Funding Guidelines**

with those regulations), the statute or regulation governs. NPFC reserves the right to modify this guidance document without prior notice.

The Natural Resource Damage Claim Guidelines are for all claimants. The three supplemental guidelines at the end of Section III address Natural Resource Damage Claims Following the Damage Assessment Regulations at 15 CFR 990 (Attachment III A), Emergency Restoration Claims (Attachment III B) and Information Pertinent to Submitting and Adjudicating Natural Resource Damage Claims (Attachment III C). Attachment III A contains supplemental guidelines that are intended for claimants asserting that they followed the Damage Assessment Regulations at 15 CFR 990 and are suggested to be completed in addition to the appropriate portions of the NRD Funding Guidelines. Attachment III B contains supplemental guidelines that are intended for claimants submitting an emergency restoration claim and are suggested to be completed in addition to the appropriate portions of the NRD Claim Guidelines. Attachment III C Provides a listing of information requests that will facilitate the submission and adjudication of natural resource damage claims. Though Attachment III C can be used as a supplemental guide for identifying information needs in general natural resource damage claims, it is primarily intended to be used as an aid to both claimants and NPFC Claims Managers in ensuring that the determinations listed in Attachment III A have been met. The supplemental guidelines are tailored to specific circumstances and may be used in addition to the NRD Funding Guidelines.



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Natural Resource Damage Claims Division
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**Natural Resource Damage
Funding Guidelines**

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SECTION II

INITIATE FUNDING GUIDANCE



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**Natural Resource Damage
Funding Guidelines**

INITIATE FUNDING TERMS AND CONDITIONS

Section 1. OVERVIEW

- A. **Background.** Section 6002 (b) of the Oil Pollution Act of 1990 (OPA90) provides that the OSLTF Emergency Fund is available “to initiate the assessment of natural resource damages” (Initiate/Initiation). For the purpose of this agreement, Initiate activities have been defined as those Preassessment activities as outlined in 15 CFR 990, Subpart D.
1. Executive Order 12777 limits funding for Initiation to the Federal Trustees, who are as follows:
 - a. Department of the Interior;
 - b. Department of Commerce;
 - c. Department of Agriculture;
 - d. Department of Defense; and
 - e. Department of Energy.
 2. Executive Order 12777 introduced the Federal Lead Administrative Trustee (FLAT) concept to provide a focal point for addressing natural resource issues associated with a specific incident. The NPFC will only accept requests for Initiation from, and normally works directly with, the FLAT. State and Tribal Trustees must work through a FLAT. Those State and Tribal Trustees acting in the event of a spill may join with the designated Federal Trustees to name a FLAT.
- B. **Case Questions.** NRD Claims Managers are available to address specific questions that may not be covered in these procedures.

Section 2. CRITERIA FOR INITIATION

- A. **Threshold.** Initiation of a natural resource damage assessment (NRDA) must be in response to an OPA incident, i.e., a discharge or substantial threat of a discharge of oil into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States.
- B. **Emergency Restoration.** Emergency restoration of natural resources is not NRD Initiation. Trustees should bring potential oil impact situations to the FOSC’s immediate attention, so a determination may be made as to whether such action is an appropriate removal activity or needs to be submitted as an emergency restoration claim. Refer to Section III B of this document for guidance on filing an emergency restoration claim.



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Natural Resource Damage Claims Division
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**Natural Resource Damage
Funding Guidelines**

Section 3. PROCEDURES FOR ACCESSING THE OSLTF TO INITIATE NRDA'S

A. Funding Requests.

1. The Trustees are encouraged, however are not required, to first seek Initiate Funding from the responsible parties for preassessment activities. This puts the responsible party on notice and facilitates cost recovery from the responsible party. Initiate Funding is available from the OSLTF Emergency Fund when time is of the essence and consultation with the responsible party is not feasible or would be clearly futile; or when the responsible party declines, is not known, or is unable to provide the requested funding.
2. Trustee funding requests to responsible parties should be clear and fully documented for future reference; written requests to responsible parties are advisable. Even when immediate funding from the OSLTF is required to start Preassessment activities, Trustees should continue to pursue responsible party restoration funding as they coordinate and consult.
3. It is anticipated that most initial preassessment activities will occur concurrently with FOSC-directed removal activities or fairly soon after the removal has been completed. Since Initiate Funding is *emergency funding* from the OSLTF, the NPFC expects the Trustees to make prompt funding requests. In most circumstances this means no later than 30 days after the completion of the removal.
4. The NPFC recognizes that in some circumstances a significant amount of time may lapse before evidence of resource injury appears; in those cases, requests for Initiate Funding should be made as soon as practicable after the evidence of injury manifests itself and a Trustee decides to start preassessment activities.
5. The OSLTF Emergency Fund will also provide Initiate funding for mystery cases.

B. Funding Approval. The NPFC is committed to providing funding approval within 24 hours after receipt of a proper request. Approval for increases in funding may be given over the phone with documentation to follow the next business day.

C. Inter-Agency Agreement.

1. The NPFC NRD Claims Manager will work with the FLAT to complete the IAG.
2. The NRD Claims Manager shall establish the amount authorized and obligated for Initiation, and assign the appropriate document control number (DCN). The Federal Project Number (FPN) assigned shall be the same as applies to the removal action, unless no FPN has been issued, in which case, the NPFC will assign an FPN. The NRD Claims Manager will ensure that the Pre-Designated FOSC is notified that Initiation activities have begun.
3. The FLAT may contact the NRD Claims Manager at any time when questions arise.



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Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
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(202)493-6860

**Natural Resource Damage
Funding Guidelines**

4. Once the IAG is executed by the NPFC, the amount is obligated against the OSLTF, and becomes a budgetary resource to the FLAT as described in OMB Circular A-34. The funding amount provided by the IAG is then available for obligation immediately by the FLAT. If the FLAT is distributing funds to other Trustees, then they are responsible for subsequent disbursements.
- D. Ceiling Management and Supplemental Requests For Funding. The FLAT manages the funds available for NRDA Initiation. The NPFC is committed to providing funds to the Trustees as quickly as possible. Conversely, the Trustees will exercise concomitant responsibility for effective ceiling management while the incident is ongoing.

Section 4. PURCHASE OF PERSONAL PROPERTY

- A. Purchase of Accountable Personal Property and Equipment. The purchase of personal property (e.g., items of equipment, computers, cameras) is not encouraged and should be done only when necessary for Initiation activities. The FLAT should, therefore, attempt to lease rather than purchase property and equipment (non-consumable items) unless the purchase can be clearly shown to be cost-beneficial to the OSLTF considering the costs necessary to purchase, maintain, and dispose of the property. When property must be purchased, the FLAT should first ask the responsible party to supply the equipment. All purchases of equipment or other personal property with the OSLTF must be done in accordance with the FLAT's or Trustee's standard agency procurement policy and authority, and shall be administered throughout its service in the initiate activity in accordance with the Federal Property Management Regulations. If the FLAT or a participating Trustee uses the OSLTF to buy equipment under the Initiation IAG, the Federal Government owns the property, and the FLAT is responsible for proper management, accounting, and disposition of the property. The FLAT must establish and maintain a system of control and accountability to ensure that the date of acquisition and costs of property/equipment funded by the OSLTF can be clearly documented.
- B. Disposal of Property. The property should not be transferred at any cost to another government agency, but rather should be turned in to the FLAT's or Trustee's appropriate agency property management or disposal center. In accordance with an agency's regulatory procedures, non-expendable property/equipment purchased with OSLTF monies should be deemed excess, and processed for disposal as soon as Initiate activities are completed. The steps for disposal are as follows: a) The SF-120 or an appropriate equivalent document should be used to report the excess items; b) Turn the property over to the nearest property management entity (Flat's agency, GSA, or local DOD DRMO); and c) Forward documentation to the NPFC to allow the maintenance of an audit trail on all such purchases, transfers, and disposals. Absence of disposal documentation may delay timely reimbursement.

Section 5. RECORDKEEPING

- A. Cost Documentation. In order to recover costs, expenses must be documented to provide responsible parties with an accounting of all Initiate costs that were incurred by the Trustees.
- B. The Pollution Incident Daily Resource Reporting System. The FLAT and participating Trustees are encouraged to document costs using the NPFC Pollution Incident Daily Resource Reporting



System, i.e., the 5136 Series of forms. These forms and accompanying Instructions on their use can be found in the "Resource Documentation and Cost Documentation Technical Operating Procedures", available from the NPFC at <http://www.uscg.mil/hq/npfc/fosc.htm>. This system was originally designed as an easy to use process for FOSCs to document removal costs, but it may also be used by Trustees for Initiation activities. Note that because these forms are multi-purpose, they mention CERCLA, however, CERCLA incidents are not eligible for Initiation funding.

- C. Content of Documentation. The NPFC does not specify the format that documentation must take. The FLAT may use any system for documenting the Preassessment as long as it meets the requirements for content. It is important to note, however, that original documentation is preferred for cost recovery, and should not be retyped, even when hand written. Accordingly, the FLAT must establish sufficient controls and procedures to provide documentation as follows:
1. Work/purchase authorization. Show that the work or purchase was authorized by appropriate authority, e.g., contracts, travel orders, work orders, rental contracts, purchase orders.
 2. Work/purchase receipt and acceptance. Show that the goods or services were received and accepted as complying with the authorization, e.g., receiving reports, delivery tickets with receipt signatures, ad hoc reports, with the date of receipt and acceptance.
 3. Work billed. Provide the cost of the work or purchase and show that these costs were properly billed to the Trustee, e.g., contractor's invoice, cash register receipts, travel reimbursement vouchers, employee timesheets or logs.
 - a. Work performed. Show the work performed (the service provided, the equipment used, the persons employed, etc.) and the quantitative factors involved in each item of work performed each day, i.e., the delivered work product.
 - b. Work unit. Identify costs according to the unit of work for each item. For contracts, that unit of work is established by the contract line item (CLIN). For time and material based contracts, the unit of work is normally hours, and the delivered work product is the number of hours per day.
 - c. Work cost. Show the cost of each unit of each item of work per day (or other time period set in the controlling agreement for that item) and the extended total cost, e.g., eight hours supervisor services per day at \$50 per hour times 7 days (specifically identified by date) equals \$2800 total cost.
 4. Work payment. Show the amount billed was paid or authorized for payment. The FLAT should certify the cost authorized for payment is sufficient for requesting reimbursement from the OSLTF, provided that any later adjustments or corrections to the amount paid are promptly reported to the NPFC.



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Natural Resource Damage Claims Division
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**Natural Resource Damage
Funding Guidelines**

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5. Trustee's internal costs. Documentation should include the following information for salary, equipment, and administrative costs for each day of Preassessment activity:
- a. Date;
 - b. Identification (employee name or ID, equipment description or ID, function performed);
 - c. Category, e.g., grade level, equipment type;
 - d. Number of hours charged for that day;
 - e. Rate (include basis for any standard rates);
 - f. Total cost (hours time rate); and
 - g. Cumulative total cost for all days.

Section 6. NPFC CONTACT INFORMATION

- A. For initiate preassessment requests, please contact the NRD Claims Division at (202) 493-6860 or at (800) 280-7118.
- B. For funding requests outside of business hours, call (800) 759-7243 PIN number 2073906.



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Natural Resource Damage Claims Division
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(202)493-6860

**Natural Resource Damage
Funding Guidelines**

**ATTACHMENT IIA
INTERAGENCY AGREEMENT TO
INITIATE
NATURAL RESOURCE DAMAGE ASSESSMENT UNDER OPA
BETWEEN THE
NATIONAL POLLUTION FUNDS CENTER AND THE
FEDERAL LEAD ADMINISTRATIVE TRUSTEE**

(Revised July 20, 2001)

FPN _____ IAG _____

I. As the Federal Lead Administrative Trustee (FLAT), the Department of (Departmental Name (Acronym)) _____ requests the obligation of funds under this Inter-Agency Agreement (the "Agreement") between the National Pollution Funds Center (NPFC) and the FLAT to Initiate a Natural Resource Damage Assessment (NRDA) for the following oil spill incident (the "Incident"):

Name: _____

Date Occurred: _____

Location: _____

This Agreement should be submitted in writing on behalf of the affected Natural Resource Damage (NRD) Trustees to the NPFC NRD Claims Division. A NRD Claims Manager will be assigned to coordinate access to the Oil Spill Liability Trust Fund (OSLTF).

II. Potential Trustee Notifications:

Contacted

Participating

	<u>Yes / No</u>	<u>Yes / No</u>
Department of Agriculture (USDA)	____/____	____/____
Department of Defense (DOD)	____/____	____/____
Department of Energy (DOE)	____/____	____/____
Department of the Interior (DOI)	____/____	____/____
Department of Commerce (DOC)	____/____	____/____
State/Commonwealth/Territory of _____	____/____	____/____
State/Commonwealth/Territory of _____	____/____	____/____
State/Commonwealth/Territory of _____	____/____	____/____
Tribal Representative(s)	____/____	____/____
Tribal Representative(s)	____/____	____/____
Other	____/____	____/____
Other	____/____	____/____
Other	____/____	____/____



National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202)493-6860

**Natural Resource Damage
Funding Guidelines**

III. Request for Funds:

Amount of this request	\$ _____
Previous amount	\$ _____
Total Amount requested	\$ _____

The amount requested may be generated by the FLAT's field representative, however, the request must be signed by a federal official with the authority to sign such funding agreements.

IV. Uses: These funds are to be used only for the preassessment phase activities in the initiation of a NRDA. This is the process by which trustees must determine whether there is jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so. Preassessment activities are outlined in 15 CFR 990, Subpart D, and include data collection, determination of jurisdiction, notice of intent to conduct restoration planning, administrative record, and determination to conduct restoration planning. Trustees not using the 15 CFR regulations may still want to use the preassessment activities listed there as guidance for appropriate initiation activities.

V. FLAT's Allocation Plan for Use of Funds: The plan for use of funds should include the participants, a list of activities to be performed, the resources required to perform each activity, and the estimated cost of those resources. It must include input from all participating Trustees. The NPFC will review the plan for consistency, reasonableness of cost for specific resources, and mathematical accuracy.

A. Participant's Use of Funds:

	Estimated Costs
DOI	_____
DOC	_____
USDA	_____
DOE	_____
DOD	_____
State/Commonwealth/Territory of	_____
State/Commonwealth/Territory of	_____
Tribal Representative(s)	_____
Tribal Representative(s)	_____
Other	_____
Other	_____
Other	_____
TOTAL (All of the Above Trustees)	_____



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Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
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(202)493-6860

**Natural Resource Damage
Funding Guidelines**

B. Estimated Cost and Completion Dates For Activities:

	Estimated Cost	Date of Completion
1. Notifications/Coordination	_____	_____
2. Travel and Per Diem	_____	_____
3. Equipment and Supplies (if not covered elsewhere)	_____	_____
4. Administration/Management	_____	_____
5. Data collection, sampling, and analysis		
Task 1 – Insert title/brief description	_____	_____
Task 2 – Insert title/brief description	_____	_____
Task 3 – Insert title/brief description	_____	_____
Task 4 – Insert title/brief description	_____	_____
6. Report Preparation (including notice documents)	_____	_____
Total Requested Amount	_____	

Activity summaries, budget breakdowns, and computations or other basis of each of these estimates (including personnel [(# persons)x(\$/day)], equipment [(# days)x(\$/day)] and contractor estimates) should be attached to this IAG.

VI. Documentation and Reimbursement: As previously explained in Chapter II, “Initiate Funding Terms and Conditions”, Section 5C, the FLAT coordinates all Initiate activities and subsequently provides documentation to the NPFC of all expenditures, costs, and activities conducted under this Agreement for which the FLAT will be reimbursed. This documentation shall itemize costs incurred to Initiate the NRDA, including: daily expenditures by individual, giving name, title or position, activity performed, time on task, salary or hourly rate, travel cost, per diem, out of pocket or extraordinary expenses; equipment purchased or rented, with the daily or hourly rate; and materials and consulting fees. All documentation will be compiled on a daily, weekly, bi-weekly or at a minimum a monthly basis. Costs may be based on standard rates, including an overhead and/or indirect cost charge. If Trustee(s) choose this approach, they must also provide the justification or rationale for the rates so that they can be defended in cost recovery. OMB Circular A-87 principles and standards will apply, as appropriate for State Trustees and Tribal Trustees.

Documentation shall include details of payments they have received from the responsible party, guarantor, a third party source, or a Congressional appropriation. The FLAT will review all of the cost documentation and certify that the costs submitted by each of the participating Trustees were reasonable and consistent with 15 CFR 990 Subpart D, and further that the amounts requested have not been and will not be sought from any other source.

The FLAT submits an SF-1080 (or SF-1081 or equivalent voucher) along with cost documentation to the NPFC to obtain direct reimbursement. When the FLAT wants the NPFC to reimburse the participating



National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202)493-6860

**Natural Resource Damage
Funding Guidelines**

Trustees directly, the FLAT should submit separate vouchers for each Trustee. The FLAT must identify in its final request for reimbursement the remaining unexpended balance to be deobligated under this IAG.

Within 120 days of the completion of Preassessment activities, the FLAT will provide a written invoice to the NPFC using form SF-1080, Voucher for Transfer Between Appropriations, or SF-1081, or an equivalent form, accompanied by the documentation as described. Transfer instructions will be provided on the SF-1080.

The FLAT should also provide a copy of the Preassessment documentation, as soon as it is available. If Preassessment activities are not finished upon clean-up or completion, the NPFC requires Interim Reports and related cost documentation submissions every 90 days after clean-up is complete.

If the NPFC does not receive the Final Report within 120 days after the completion of Initiation activities, the NPFC will advise the FLAT in writing that funding may be deobligated. In the event of extenuating circumstances, extensions will be granted upon written request.

The Final Report should involve a narrative summary explaining what was done and why. This report will help to support cost recovery efforts.

VII. **Cost Recovery:** The Fund obtains the rights to recover these costs once paid. The amount reimbursed to Trustees will be billed to the responsible parties. The FLAT shall ensure that all Trustees involved in this Incident agree to assign cost recovery actions arising from this Incident to the OSLTF, to the extent they represent costs reimbursed pursuant to this Agreement. In addition, the FLAT agrees to support cost recovery efforts and to cooperate fully with the NPFC in any claim or action by the OSLTF against the responsible party, guarantor, or other persons to recover costs from this Incident. The FLAT shall notify the NPFC of any negotiation(s) to execute an agreement between any Trustee and responsible party/guarantor.

VIII. **Supplemental Requests:** Nothing in this Authorization prohibits the FLAT from requesting supplemental funds for the same Incident. Whenever it appears that actual costs may exceed the initially requested amount, the FLAT should promptly request supplemental funding in the same manner as the original request. Until such supplemental funds are obligated by an amendment to the IAG, the FLAT must take appropriate action to prevent exceeding the previously obligated amount. The NPFC will not reimburse the FLAT for costs in excess of the signed Agreement and supplemental.

IX. **Deobligation:** This Agreement will be closed 120 calendar days from the date of completion of the Preassessment Activities. As previously stated in Section VI of this Agreement, if cost documentation is not forthcoming within that time, the NPFC will advise the FLAT in writing that funding may be deobligated. If required, extensions will be granted upon written request.



National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202)493-6860

**Natural Resource Damage
Funding Guidelines**

X. Agreement Certification And Assignment of Contact Person: I certify that (Department Name, Acronym)_____ is the FLAT, and that I am authorized to sign this document on behalf of the Trustees. I further certify that all actions to be funded are for Initiate activities, as described in 15 CFR 990, Subpart D.

(Name of FLAT)
(Position of FLAT within the Trustee Agency)

For the Department Name (Acronym)

(Date)

FLAT Contact Person: _____
Address: _____

Phone: _____
Fax: _____



National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202)493-6860

**Natural Resource Damage
Funding Guidelines**

XI. Authorization and Authority:

In accordance with Oil Pollution Act of 1990 (33 USC 2752(b)), the NPFC authorizes the obligation of funds to the (Department Name, Acronym) _____ to initiate an NRDA for the Incident and activities described in the request dated _____ (to agree with date in Paragraph X). Total amount of funds available under this Agreement shall not exceed \$_____. The Federal Project Number _____ and the Inter-Agency Agreement Number _____ must be referenced on cost documentation and all requests for reimbursement from the OSLTF.

(Signature of NPFC NRD Claims Manager)

Date

NPFC Contact Person: _____

Address: _____

Telephone: (202) 493-_____

Fax: (202) 493-6939

Enclosures:

SECTION III

NATURAL RESOURCE DAMAGE CLAIMS GUIDELINES



National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202)493-6860

**Natural Resource Damage
Funding Guidelines**

NATURAL RESOURCE DAMAGE CLAIM GUIDELINES

To facilitate comprehensive and efficient adjudication of natural resource damage claims that follow the Oil Pollution Act of 1990 (OPA) and the associated National Pollution Funds Center (NPFC) Interim Claims Regulations (33 CFR 136), the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use the Natural Resource Damage (NRD) Claim Guidelines. Though it is not required by the NPFC that a claimant use these guidelines, use of the NRD Claim Guidelines will facilitate the generation of a complete claim. This will allow for efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

Natural resource damage assessment (NRDA) regulations are available under OPA at 15 CFR Part 990. Those NRDA regulations set out a process for assessing injuries to natural resources and planning the restoration of those injured natural resources. Trustees are **not** required to use the NRDA regulations and may use some other natural resource damage assessment process. However, the review of NRD assessments that were conducted using the 15 CFR 990 regulations have a more favorable statute of limitations, are granted a rebuttable presumption of correctness and will generally be reviewed by the NPFC upon the administrative record of the assessment.

General Guidelines for Completing Natural Resource Damage Claims:

- Refer to the text of OPA (33 U.S.C. 2701 et seq.) AND the NPFC Interim Claims Regulations (33 CFR 136).
- Upfront funding of costs for assessment and/or of developing a publicly reviewed restoration plan may be obtained from NPFC.
- The claimant may reference information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement. In certain cases, one reference may pertain to multiple information requests in this document.
- Further description of the types of information useful in submitting and evaluating these claims can be found in Attachment III C to these funding guidelines.

1. Claim Information

A. Claimant Information

- i. Provide the name of the claimant, agency affiliation, address, telephone number, fax number, email address and other pertinent contact information.

B. Incident Information

- i. Provide the date, time, name of the vessel or facility causing injury, geographic location of the incident, and a brief description of the incident.



National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
(202)493-6860

**Natural Resource Damage
Funding Guidelines**

- ii. Provide a description of the trustee's basis for determining that the oil spill (or a threat of an oil spill) is an incident as defined by the Oil Pollution Act (OPA) at 33 U.S.C. 2701(14). Specifically, provide a description of the trustee's basis for determining that the incident is:
 - a) Not allowed under a permit issued under federal, state or local law;
 - b) Not from a public vessel;
 - c) Not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act (43 U.S.C. 1651 et seq.).

C. Responsible Party(ies) Information

- i. Has a responsible party(ies) been identified for this incident?
 - a) If yes, please provide contact information for the responsible party(ies).
 - b) If no, please explain the circumstances under which the responsible party(ies) could not be identified, and skip to section D.
- ii. Has the claimant released any responsible party(ies) or other person from liability, in whole or part, for NRD, or other damages or removal costs?
 - a) If yes, provide a copy(ies) of the release(s).
- iii. Has the claim been submitted to the responsible party(ies)?
 - a) If yes,
 - 1) Provide the date that the claim was submitted.
 - 2) Attach a copy of written communications between the claimant and the responsible party(ies).
 - 3) Describe the substance of verbal communications between the claimant and the responsible party(ies).
 - 4) Describe any action regarding the claim that has been taken by the Responsible Party(ies).
 - 5) Has the claimant commenced any action in court against the responsible party(ies)?
 - (i) If yes, provide the name/address/telephone number/fax number/email of the attorney(s) representing the trustee(s), the court in which the action is pending, and the civil action number.



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Natural Resource Damage Claims Division
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**Natural Resource Damage
Funding Guidelines**

D. Claim Elements and Total Amount of Costs and Damages Claimed

- i. Please indicate which of the components listed below are included in the claim. Include documentation to support each as described below.
 - a) The reasonable cost of assessing natural resource damages resulting from the incident identified above. Indicate the total amount claimed and attach a copy of the assessment plan and Administrative Record Index.
 - b) The cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured natural resources (including the diminution in value of those resources pending restoration). Indicate the total amount claimed and attach a copy of the assessment and restoration plans (or, if using the 15 CFR 990 regulations attach a copy of the Damage Assessment and Restoration Plan) and Administrative Record Index.
 - c) Emergency Restoration costs for actions required to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action. Indicate the total amount claimed and attach a copy of the emergency restoration plan and/or any post emergency restoration reports with documentation supporting such need for emergency restoration. (Refer to Section III B for further details.)
- ii. Please provide the following supporting cost documentation, as applicable:
 - a) Summary of Past and Proposed Costs: Provide a summary of both past (e.g., injury assessment and restoration planning) and proposed (e.g., assessment and restoration project implementation) costs.
 - b) Any Inter-Trustee and Trustee-Responsible Party NRDA Memoranda regarding this Incident: Provide a copy of memoranda of agreement or understanding regarding the execution of the claimed NRDA.
 - c) Costs Already Incurred: Provide supporting documentation of the cost's associated with past actions in compliance with the assessment and/or (emergency) restoration plan(s). Include:
 - 1) Actions Undertaken: The following types of documentation supporting past actions should be included in the claim, as appropriate:
 - (i) Description of actions: provide sufficient narrative allowing for a rapid and complete review of claimed actions taken. Include dates that actions were executed. Claimants are encouraged to use form CG-5136A (available from the National Pollution Funds Center website, <http://www.uscg.mil/npfc/CG5136A.doc>) or other status report formats to document actions taken during the execution of the NRDA. It is intended that these reports provide further detail and clarification of actions undertaken and referenced in the overall case narrative.



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**Natural Resource Damage
Funding Guidelines**

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- (ii) Demonstration that actions were authorized: Show that the work or purchase was authorized by an appropriate authority (e.g., contracts, travel orders, work/task orders, rental contracts and purchase orders). For task orders issued to contractors/consultants by claimant(s), include the funding amount, activities to be undertaken, lists of deliverables, schedule of deliverables, and all task order modifications.
 - (iii) Demonstration that actions were completed (e.g., provide reference to contemporaneous reports or field notes)
 - (iv) Demonstration that actions were received and accepted (e.g., receiving reports, delivery tickets with receipt signatures)
- 2) Personnel, Equipment and Other Miscellaneous Resources Used: Personnel (government and contractor), equipment and other miscellaneous resources used should be documented on a daily, weekly, bi-weekly or at a minimum a monthly basis. Claimants should provide the length of time all personnel and equipment were used; and an inventory of all materials used.
 - 3) Personnel, Equipment and Other Miscellaneous Costs: Provide the cost of the work or purchase and show that these costs were properly billed to the Claimant, e.g., include Federal/State costs (i.e., standard rates, costs for the personnel, equipment, etc.), contractor's invoices, cash register receipts, travel reimbursement vouchers and employee timesheets or logs. Claimants are encouraged to document costs using the NPFC Pollution Incident Daily Resource Reporting System, i.e., the 5136 Series of forms. These forms and accompanying Instructions on their use can be found in the "Resource Documentation and Cost Documentation Technical Operating Procedures", available from the National Pollution Funds Center website, <http://www.uscg.mil/hq/npfc/resource.pdf>.
- d) Future Costs: Provide supporting documentation of the cost's associated with anticipated actions identified in the assessment and/or (emergency) restoration plan(s). Include:
 - 1) Work to be performed
 - 2) Schedule of work
 - 3) Detailed estimated level of resources and time (i.e., government/contractor personnel, equipment, contracts).
 - 4) Standard rates, cost estimates for the personnel, equipment, etc. The basis for estimates should be stated (e.g., multiple cost bids, goods and services cost estimates, standard/published rates and costs, etc.). Where applicable, the results of multiple bid quotes should be provided with an explanation of why the lowest bid used in the claimed cost was not chosen. Rationale for ancillary costs (e.g., contingency costs) and their respective magnitude should be explained.



National Pollution Funds Center
Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
Arlington, VA 22203-1804
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**Natural Resource Damage
Funding Guidelines**

- e) Documentation of Any Payments Received: Provide documentation of payments received from the Responsible Party(ies), or any other source, for NRD and any other damages or removal costs as a result of this oil pollution incident. A description of these payments should accompany this documentation.
- f) Standard Form 1080/1081 (for Federal Claimants only).

E. Statute of Limitations

- i. The Statute of Limitations (SOL) under OPA for the filing of NRD claims with the NPFC is the later of the following:
 - a) Three years from the date the injury and connection with the discharge was reasonably discoverable with due care;
 - b) Or three years from the date of completion of the natural resource damage assessment under the damage assessment regulations published by the National Oceanic and Atmospheric Administration (NOAA) at 15 CFR Part 990.
- ii. Please provide documentation or otherwise demonstrate that this claim has been filed within the Statute of Limitations under OPA (33 U.S.C. 2712(h)(2), 33 C.F.R. 136.101). Include the date that the NRD assessment was completed if the assessment was prepared using the Damage Assessment Regulations at 15 CFR 990.

2. Adherence to Damage Assessment Regulations

- A. Does the claimant (on behalf of self and other involved trustee(s)) certify that the NRDA was conducted¹:
 - i. Using the Damage Assessment Regulations at 15 CFR Part 990 (promulgated by NOAA)?
 - ii. ***If yes, claimant may wish to consider completing Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990. If Attachment III A is completed then claimants can go directly to paragraph 7, Opening an Account for Recovered Damages, and paragraph 8, Witnesses and Certifications, below.***
 - iii. Using the NRD regulations at 43 CFR Part 11 (promulgated by the U.S. Department of the Interior)? or
 - iv. Using other or additional NRD regulations or processes?
 - a) Describe the other regulation(s) or processes used.

¹ Use of the Damage Assessment Regulations at 15 CFR 990 is not required for submitting a claim to the NPFC for reimbursement from the OSLTF. However, completing an NRDA using 15 CFR 990 extends the SOL period for submitting a claim to three years from the date that the assessment is completed.



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**Natural Resource Damage
Funding Guidelines**

3. Trustee Information

A. Trustee Designation

- i. Has the involved trustee(s) previously submitted proof to the NPFC of their authority to act as trustee(s) of natural resources on behalf of the government they represent?
- ii. If no, or trustee designation has changed, please submit proper designation with this claim.
- iii. If not applicable, please state why.

B. Trustee Coordination

- i. Indicate whether the claimant is acting as lead administrative trustee on behalf of other trustees for purposes of this claim. If not applicable, please state why.
- ii. Provide contact information for each additional trustee involved in the claim.

C. Double Recovery

- i. To your knowledge, in addition to the trustees listed above, are there any other trustees who have a right to present a claim for the same natural resource injuries?
- ii. If yes, provide contact information for these trustees.

D. Public Notice Requirements

- i. Describe the nature of the public notification of the intent to conduct restoration planning, assessment and/or restoration plan development and implementation.
- ii. Provide the date of the public hearing(s) on assessment or restoration plan development and implementation, or discuss the reason for not holding hearings.
- iii. Describe public comment solicitation activities and how public comments were considered in developing and implementing the assessment and/or restoration plan.

4. Assessment Information

- A.** Fully explain the assessment method(s) used to assess injury(ies), including the scientific and technical basis(es) of the method(s). Include all evidence that the use of such method(s) is(are) valid and reliable for this incident.
- B.** Provide and describe the data used to support the assessment results and explain how it supports the determination as to the nature and scope of the injury(ies).
- C.** Explain any quality assurance and chain of custody procedure(s) used in the assessment.
- D.** Describe the nature and scope of the injured natural resource(s).



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Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
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**Natural Resource Damage
Funding Guidelines**

- E. Demonstrate how the oil incident caused the injury(ies); establish the pathway from the incident to the natural resource; establish exposure; and demonstrate an adverse change in the resource(s) caused by that exposure.
- F. Quantify the injury(ies) as to severity and spatial and temporal extent.
- G. Demonstrate and quantify any resulting lost natural resource service(s), if applicable.
- H. Estimate time for natural recovery.
- I. Explain the method(s) used to determine any lost public use values or to scale the restoration actions to compensate for interim losses. Include supporting data.
- J. Provide any additional comments that you believe will enhance the NPFC's understanding of this injury assessment.

5. Avoidance or Minimization of Injuries

- A. Describe actions taken to avoid or minimize injuries.

6. Restoration Information

- A. Please explain how the proposed restoration plan restores, rehabilitates, replaces, or acquires the equivalent of the injured natural resource(s) and service(s).

7. Opening an Account for Recovered Damages

- A. Demonstrate that all sums recovered by the trustee(s), in satisfaction of a NRD claim, will be placed in a revolving trust fund(s), without further appropriation.
- B. Describe how the trustee(s) will maintain appropriate accounting and reporting procedures to document expenditures from such accounts.
- C. Describe how the trustee(s) will ensure that any sums not used to either reimburse trustees for past assessment and emergency restoration costs or to implement restoration will be returned to the NPFC for re-deposit into the Oil Spill Liability Trust Fund (OSLTF).

8. Points of Contact and Certifications

- A. Points of Contact
 - i. Provide the full name, street and mailing address, and telephone number of the parties to the claim.
- B. Certifications and Signature



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**Natural Resource Damage
Funding Guidelines**

I, the undersigned, certify the accuracy and integrity of this claim and certify that actions taken or proposed were or will be conducted in accordance with the Oil Pollution Act of 1990 and consistent with all applicable laws and regulations.

I, the undersigned, certify that, to the best of my knowledge and belief, no trustee(s) other than those identified in this claim has the right to present a claim for the same natural resource injuries and that payment of any subpart of this claim would not constitute double recovery for the same natural resource injuries.

I, the undersigned, agree that upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim or action by the United States to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing to the Fund any compensation received from any other source for the same costs and/or damages and, providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover such compensation.

I, the undersigned, certify that, to the best of my knowledge and belief, the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under Federal law (including but not limited to 18 U.S.C. 287 and 1001).

I, the undersigned, certify that the assessment was conducted in accordance with the Damage Assessment Regulations at 15 CFR 990 (promulgated by NOAA) – **No** __ **Yes** __

Claimant's Authorized Representative

Date

Mail Claim and Address Questions to:

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**Natural Resource Damage
Funding Guidelines**

**ATTACHMENT III A:
NATURAL RESOURCE DAMAGE CLAIMS
USING THE DAMAGE ASSESSMENT REGULATIONS AT 15 CFR 990**

To facilitate comprehensive and efficient adjudication of natural resource damage claims that follow the Damage Assessment Regulations for oil spills at 15 CFR 990 (promulgated by NOAA), the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use this supplemental guideline - *for claims based on NRDA's that use the Damage Assessment Regulations (15 CFR 990) process only*. Though it is not required by the NPFC that a claimant use this supplement, use of this supplement will facilitate efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

This supplement to the Natural Resource Damage (NRD) Claim Guidelines for all claimants should guide all claimants using the Damage Assessment Regulations (15 CFR 990). Use of the Damage Assessment Regulations obtains, for the claimant, the force and effect of a rebuttable presumption and also confers a favorable statute of limitations period for the claim. These issues in the supplement should be addressed in conjunction with the NRD Claim Guidelines to submit a valid claim to the NPFC.

General Guidelines for Completing Attachment III A: Natural Resource Damage Claims Using the Damage Assessment Regulations at 15 CFR 990:

- Please provide information requested in paragraphs 1, 2, 7, and 8 of the Natural Resource Damage (NRD) Claim Guidelines.
- Refer to the text of the Damage Assessment Regulations (15 CFR 990).
- If Attachment III A suggests the claimant provide information that has been previously provided by the claimant in the NRD Claim Guidelines, the claimant may reference that information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement of the regulation. In certain cases, one reference may pertain to multiple information requests in this document.

1. Damage Assessment Regulations

- A. Does the NRDA follow the Damage Assessment Regulations at 15 CFR part 990 (promulgated by NOAA)?
 - i. If no, then it is not necessary to use this supplement in order to submit a claim to the NPFC. Completing the NRD Claim Guidelines (Section III) is sufficient.
 - ii. If yes, then Attachment III A to the NRD Claim Guidelines should be used in addition to paragraphs 1, 2, 7, and 8 of the NRD Claim Guidelines when submitting a claim to the NPFC.
 - iii. *Also, please provide the Final Restoration Plan and the index to the Administrative Record sufficient to document the required Determinations listed below.* Clarification of the types of information needed for submission and evaluation of these determinations can be found in



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**Natural Resource Damage
Funding Guidelines**

Attachment III C to these funding guidelines. For further information each determination below is followed parenthetically by a cross reference to the applicable section number in the 15 CFR 990 regulations and the pertaining section of Attachment III C.

- a) Jurisdiction to pursue restoration under OPA was determined (§ 990.41; Attachment III C1);
- b) Conditions for collection of data during preassessment phase were appropriate (§ 990.43);
- c) Conditions for proceeding with assessment beyond the preassessment phase were determined (§ 990.42; Attachment III C2);
- d) Findings and conditions for conducting emergency restoration were determined (§ 990.26; Attachment III B);
- e) Notice of Intent to Conduct Restoration Planning was produced (§ 990.44; Attachment III C9);
- f) Administrative record of the assessment was established (§ 990.45; Attachment III C10);
- g) Lead Administrative Trustee was designated for jointly conducted assessment (§ 990.14(a); Attachment III C3);
- h) Coordination efforts with co-trustees, response agencies, and public are documented (§ 990.14); Responsible party was invited to participate in the assessment (§ 990.14(c); Attachment III C3-6);
- i) **For spills occurring between August 1990 and January 1996**, election to complete pre-rule assessments under either CERCLA or OPA rule was made (§ 990.20);
- j) Injury was determined, along with exposure and pathway where required (§ 990.51); Appropriate injuries were selected to include in assessment and restoration planning (§ 990.51(f)); Injuries resulted from the incident (§ 990.51(a); Attachment III C8);
- k) Injuries were quantified (§ 990.52(a); Attachment III C8);
- l) Analysis of natural recovery was conducted (§ 990.52(c); Attachment III C11);
- m) Range of feasible restoration alternatives was identified, including: (a) primary restoration, includes natural recovery alternative; (b) compensatory restoration alternatives considerations; (c) explanation of scaling of restoration alternatives (§ 990.53); use of regional restoration or other existing project plan as one of alternatives considered (§ 990.56; Attachment III C11);
- n) Restoration alternatives were evaluated and preferred alternative(s) was selected (§ 990.54; Attachment III C12);



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4200 Wilson Blvd., Suite 1000
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**Natural Resource Damage
Funding Guidelines**

- o) Draft Restoration Plan and Final Restoration Plan were developed (§ 990.55; Attachment III C12);
- p) Assessment methodologies met required standards (§ 990.27; Attachment III C7);
- q) Assessment costs were certified as reasonable (§ 990.30; Attachment III C7); and
- r) Demand was presented to responsible party and responsible party's response is documented (§ 990.62; Attachment III C15, 17).

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**Natural Resource Damage
Funding Guidelines**

**ATTACHMENT III B
EMERGENCY RESTORATION CLAIMS**

To facilitate comprehensive and efficient adjudication of natural resource damage claims submitted for emergency restoration claims, the U.S. Coast Guard, National Pollution Funds Center (NPFC) suggests that the claimant use this supplemental guideline. Though it is not required by the NPFC that a claimant use this supplement, use of the Emergency Restoration Claims Supplement will facilitate efficient and comprehensive evaluation of claims, minimizing the need for repeated information requests of the claimant.

Emergency restoration of natural resources is not NRD Initiation. Trustees should bring potential oil impact situations to the FOSC's immediate attention, so a determination may be made as to whether such action is an appropriate removal activity or needs to be submitted as an emergency restoration claim.

General Guidelines for Completing Natural Resource Damage Claim Guidelines:

- Provide information requested in paragraphs 1, 3, 5, 7, and 8 of the Natural Resource Damage (NRD) Claim Guidelines.
- Refer to the text of OPA (33 U.S.C. 2701 et seq.), the NPFC Interim Claims Regulations (33CFR 136), and/or the Damage Assessment Regulations at 15 CFR 990 (promulgated by NOAA)
- Emergency restoration claims may be submitted prior to emergency restoration for up-front funding.
- If Attachment III B suggests the claimant provide information that has been previously provided by the claimant in the NRD Claim Guidelines, the claimant may reference that information and its location in the NRD claim. Ensure that at all times, the information provided is sufficient and clearly stated such that the NPFC can understand the response to the requirement of the regulation.

Emergency Restoration

1. Did the trustee(s) undertake any emergency restoration actions before completing the natural resource damage assessment?
 - A. If yes, please provide information to verify the following:
 - i. That the action(s) was(were) needed to minimize continuing injury(ies) or prevent additional injury(ies).
 - ii. That the action(s) was(were) feasible and likely to minimize continuing injury(ies) or prevent additional injury(ies).
 - iii. That the costs of each emergency action are/were not unreasonable.



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**Natural Resource Damage
Funding Guidelines**

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2. If response actions were underway at the time of the emergency restoration action, did the trustee's(s') Regional Response Team (RRT) member (or designee) coordinate with the On-Scene Coordinator (OSC) before undertaking any emergency restoration actions?
 - A. If yes, please provide the following information:
 - i. Describe coordination efforts (e.g., dates of coordination, outcome).
 - ii. Provide the name, affiliation, address, telephone and fax numbers, and e-mail of the RRT member (or designee) that provided coordination between the trustee(s) and the OSC.
 - iii. Provide the name, affiliation, address, telephone and fax numbers, and email of the OSC.
 - B. If no, please explain why.
 3. Did the trustee(s) provide notice to the identified responsible party(ies) of any emergency restoration action(s)?
 - A. If yes, please provide a description of the notice or append a copy of the notice. Include the date sent and the contact for each responsible party.
 - B. If no, please explain why.
 4. Did the trustee(s) invite the participation of the responsible party(ies) in the conduct of the emergency restoration action(s)?
 - A. If yes, please provide a description of the invitation or append a copy of the invitation. Include the nature by which the notice was provided and the date(s).
 - B. If no, please explain why.
 5. Did the trustee(s) provide notice to the public of the planned emergency restoration action(s)?
 - A. If yes, please provide a description of the notice to the public or append a copy. Provide the date of the notice.
 - B. If no, please explain why.
 6. Did the trustee(s) provide public notice of the justification for, nature and extent of, and results of the emergency restoration action(s) within a reasonable time frame after completion of such action(s)?
 - A. If yes, please provide a description of the notice to the public or append a copy. Provide the date of the notice.



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**Natural Resource Damage
Funding Guidelines**

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- B.* If no, please explain why.
7. Please attach a copy of the emergency restoration plan and/or any post emergency restoration reports. If there is no emergency restoration plan, please explain why one was not produced.
8. Please attach an itemized estimate of funds needed to carry out the emergency restoration.

Mail Claim and Address Questions to:

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**Natural Resource Damage
Funding Guidelines**

**ATTACHMENT III C:
INFORMATION PERTINENT TO SUBMITTING AND ADJUDICATING NATURAL
RESOURCE DAMAGE CLAIMS**

This attachment provides a listing of information requests that will facilitate the submission and adjudication of natural resource damage claims that have followed the damage assessment regulations at 15 CFR 990. Though the information needs listed below pertain primarily to 15 CFR 990-based claims, many of the questions listed below also pertain to general NRD claims (i.e., as described in Section III of these funding guidelines). This attachment is primarily intended to be used to as an aid to both claimants and NPFC Claims Managers in ensuring that the determinations listed in Attachment IIIA have been met.

1. Determination of Jurisdiction

- A. Describe how the trustee(s) determined that there was jurisdiction to pursue restoration planning under OPA by providing to the following:
 - i. Natural Resources under the trusteeship of the trustee(s) may have been, or may be, injured as a result of the incident.

2. Determination to Conduct Restoration Planning

- A. Describe how the trustee(s) determined to conduct restoration planning by providing the following:
 - i. Describe how the trustee(s) determined whether injuries have resulted, or are likely to result, from the incident.
 - ii. Describe how the trustee(s) determined that response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident.
 - iii. Describe how the trustee(s) determined that feasible primary and/or compensatory restoration actions exist to address the potential injuries.

3. Trustee Coordination

- A. Does the incident affect the interests of multiple trustees?
- B. If yes, please provide the following information:
 - i. Did the trustees act jointly when conducting the assessment?
 - ii. List the trustees involved in the joint assessment. For each trustee, provide the name, affiliation, address, telephone, fax, and email of the point of contact. Indicate which trustee(s), if any, is(are) acting independently.
 - iii. Describe how the trustees are acting jointly to achieve full restoration without double recovery of damages (e.g., formation of a Trustee Council, cooperation on assessment studies, etc.).



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Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
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(202)493-6860

**Natural Resource Damage
Funding Guidelines**

- iv. If this claim is based on a joint assessment, indicate which trustee(s) from the list provided in 3(b)(ii) is acting as the Lead Administrative Trustee (LAT).
- v. If this claim is based on a joint assessment and a LAT has not been designated, please explain why.

4. Coordination with Response Agencies

- A. Were trustee(s)' activities that were conducted concurrently with response operations coordinated with the response agencies?
 - i. If yes, please describe the nature of the coordination efforts (e.g., interactions with the Unified Command, On-Scene Coordinator briefings, etc.).
 - ii. If no, please provide an explanation as to why trustee(s)' activities were not coordinated with the response agencies.

5. Coordination with Responsible Party(ies)

- A. Did the trustee(s) invite the responsible party(ies) to participate in the NRDA?
 - i. If yes, please provide the following information:
 - a) Describe the nature of the invitation (e.g., whether it was written or verbal, the date it was submitted to the responsible party(ies)) and attach the written invitation, if applicable.
 - b) Identify whether the date of the invitation predates the delivery of the Notice of Intent (NOI) to Conduct Restoration Planning (include both dates in your response).
 - c) Did the trustee(s) receive a written response from the responsible party(ies) accepting or declining the invitation?
 - 1) If yes, please attach the response.
 - ii. If no, please explain why.

6. Coordination with the Public

- A. Did the trustee(s) provide opportunities for public involvement following the trustee(s)' decision to develop restoration plans (or issuance of any notices to that effect)?
 - i. If yes, please provide the following information:
 - a) Please provide the date that the trustee(s) issued a Notice of Intent to Conduct Restoration Planning.



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Natural Resource Damage Claims Division
4200 Wilson Blvd., Suite 1000
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(202)493-6860

**Natural Resource Damage
Funding Guidelines**

- b) Describe the nature of the public involvement opportunities (e.g., method and duration of advertisements for public input, hearings, period for comment on written notice).

ii. If no, please explain why.

7. Standards for Assessment Procedures

- A. Describe how each assessment procedure used was capable of providing assessment information of use in determining the type and scale of restoration appropriate for each injury addressed in the claim.
- B. If an additional cost was incurred by utilizing a more complex assessment procedure(s), describe how the additional cost of the more complex assessment procedure(s) was(were) reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure(s). Do so for all relevant procedures.
- C. Describe how each assessment procedure used was reliable and valid for the particular incident.
- D. Describe how the trustee(s) considered the following when selecting each assessment procedure:
- The range of procedures available;
 - The nature, severity, and spatial and temporal extent of the injury;
 - The potential restoration actions for the injury;
 - The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning; and
 - The most cost-effective procedure was used when a range of assessment procedures, which provided the same type and quality of information, was available.

8. Injury Determination and Quantification

- A. Describe how the trustee(s) determined that an injury(ies), as defined in section 15 CFR 990.30, has occurred and how the nature of the injury(ies) was(were) identified.
- B. Where applicable, describe how the trustee(s) determined that natural resources were exposed, either directly or indirectly, to the discharged oil from the incident. Include an estimate of the amount or concentration and spatial and temporal extent of the exposure.
- C. Describe how the trustee(s) determined the pathway(s) linking the incident to the injury(ies).
- D. Provide the information used to quantify the injury(ies) resulting from the incident. If this material is provided elsewhere within the claim, state where this information can be found.
- E. For claimed injuries caused by response actions, and/or those caused by the substantial threat of discharge, demonstrate how the trustees determined that natural resources were injured.



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**Natural Resource Damage
Funding Guidelines**

- F. Provide the information used to quantify or qualify the time required for natural recovery while factoring in any response actions.

9. Notice of Intent (NOI) to Conduct Restoration Planning

- A. Attach a copy of the NOI to Conduct Restoration Planning.
- B. Describe how the NOI addresses:
- i. The trustee(s)' determination of jurisdiction to pursue restoration under OPA.
 - ii. The trustee(s)' determination to conduct restoration planning.
- C. Describe how the NOI was made publicly available (include any date(s) of advertisement and method(s) of advertisement).
- D. Describe how the trustee(s) delivered a copy of the NOI to the responsible party(ies). Include the date of receipt of the NOI.

10. Administrative Record

- A. Provide documentation that the trustee(s) opened a publicly available Administrative Record to document the basis for their decisions pertaining to restoration.
- B. Provide documentation that the Administrative Record was opened concurrently with the publication of the NOI.
- C. Describe how and where the public can view the Administrative Record. If there is an Administrative Record file index, please provide a copy (Provide the name, address, telephone and fax numbers, and email of the Administrative Record point of contact).
- D. Describe how the Federal trustee(s) will maintain the Administrative Record in a manner consistent with the Administrative Procedures Act (5 U.S.C. 551-59, 701-06).

11. Developing Restoration Alternatives

- A. Describe the restoration objective(s) that was (were) established by the trustee(s).
- B. Demonstrate that a reasonable range of restoration alternatives were considered before selecting the preferred alternative for each resource or service claimed to be injured.
- C. Demonstrate that each of the following considerations was addressed while developing each restoration alternative:
- i. Primary restoration was considered for each restoration alternative;
 - ii. Natural recovery was considered for each restoration alternative (natural recovery is a restoration alternative in which no human intervention is undertaken to directly restore



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**Natural Resource Damage
Funding Guidelines**

- injured natural resources and services to baseline, i.e., the state of the natural resource(s) had the incident not occurred); and
- iii. Demonstrate that each restoration alternative considers compensatory restoration actions that are designed to compensate for the interim loss of natural resources and services pending recovery.
 - a) Describe how the trustee(s) considered compensatory restoration actions that provide services of the same type, quality and of comparable value as those injured.
 - b) If, in the judgment of the trustee(s), it is not possible to identify a reasonable range of alternatives based on compensatory actions that provide services of the same type and quality and comparable value as those injured, describe how the trustee(s) identified other actions that provide natural resources and services of comparable type, quality and value as those provided by the injured natural resources.
 - D. Demonstrate how the trustee(s) determined the scale for each of the identified types of restoration actions that will make the environment and public whole.
 - i. Describe how the trustee(s) considered the use of a resource-to-resource or service-to-service scaling approach.
 - ii. If the trustee(s) determined that neither resource-to-resource nor service-to-service scaling is appropriate, describe how the trustee(s) considered the valuation scaling approach(es).
 - E. Demonstrate how the trustee(s) evaluated the uncertainties associated with the projected consequences of the restoration action.
 - F. Demonstrate how the trustee(s) discounted all service quantities and/or values to the date the demand is presented to the responsible party(ies).

12. Developing Restoration Plans

- A. Attach copies of the Draft and Final Restoration Plans.
 - i. Describe how the preferred restoration alternative(s) was (were) selected.
 - ii. Describe the monitoring component(s) to the Restoration Plan.
- B. How were the costs of restoration implementation and monitoring that are identified in the restoration plan determined or estimated.
- C. Describe the nature of the public review for both the Draft and Final Restoration Plans.
 - i. Demonstrate that the time period for public review on the Draft Restoration Plan/Environmental Assessment was consistent with the federal trustee agency's National Environmental Policy Act requirements, and no less than 30 calendar days.



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- ii. If an EIS was warranted, demonstrate that the Draft Restoration Plan/Environmental Impact Statement (EIS) was made available for public review for a minimum of 45 calendar days.
- iii. If an EIS was warranted, demonstrate that the Final Restoration Plan/EIS was made available for public review for a minimum of 30 calendar days.
- iv. Demonstrate how the Final Restoration Plan considered all public comments on the Draft Restoration Plan.

13. Closing the Administrative Record for Restoration Planning

- A. Provide the date, after the trustee(s) completed restoration planning, that the Administrative Record was closed.
 - i. If the Administrative Record was not closed, explain why not.

14. Restoration Implementation

- A. Was an Administrative Record opened for implementation of restoration?
 - i. If yes, provide the date on which the Administrative Record was opened.
 - ii. If yes, describe how and where the public can view the Administrative Record. If there is an Administrative Record file index, please provide a copy (Provide the name, address, telephone and fax numbers, and email of the Administrative Record point of contact).

15. Presenting a Demand

- A. Demonstrate that the trustees presented a written demand to the responsible party(ies). Include the date of receipt of the demand by the responsible party(ies).
- B. Provide a copy of the written demand and describe how it invites the responsible party(ies) to participate.

16. Discounting and Compounding

- A. Demonstrate that the trustee(s) discounted all estimated future costs of implementing a Final Restoration Plan back to the date the demand was presented.
 - i. Provide the discount rate used and the basis for the rate used.
- B. Demonstrate that the trustee(s) compounded all calculated present value assessment and emergency restoration costs already incurred forward to the date the demand was presented.
 - i. Provide the rate used and the basis for the rate used.



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17. Unsatisfied Demands

- A. Did the responsible party(ies) respond to the demand within 90 calendar days from their receipt of the demand? If yes, provide their response. If no, have the trustee(s) filed a judicial action for damages or do they plan to file such an action?
- B. If judicial action has been filed or if a claim has been filed, demonstrate that such an action or claim has been filed within three years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available.

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